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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1937.

No. 293

EDWARD LAUF and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, Local No. 73,

Petitioners,

vs.

E. G. SHINNER & COMPANY, Inc.,

Respondent.

BRIEF OF THE RESPONDENT

in Opposition to the Petition for Writ of Certiorari.

WALTER L. GOLD,
Counsel for Respondent.

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Respondent.

BRIEF OF THE RESPONDENT

in Opposition to the Petition for Writ of Certiorari.

May It Please the Court:

Pursuant to Rule 38, Paragraph 3, respondent submits this brief in opposition to petitioners' petition for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

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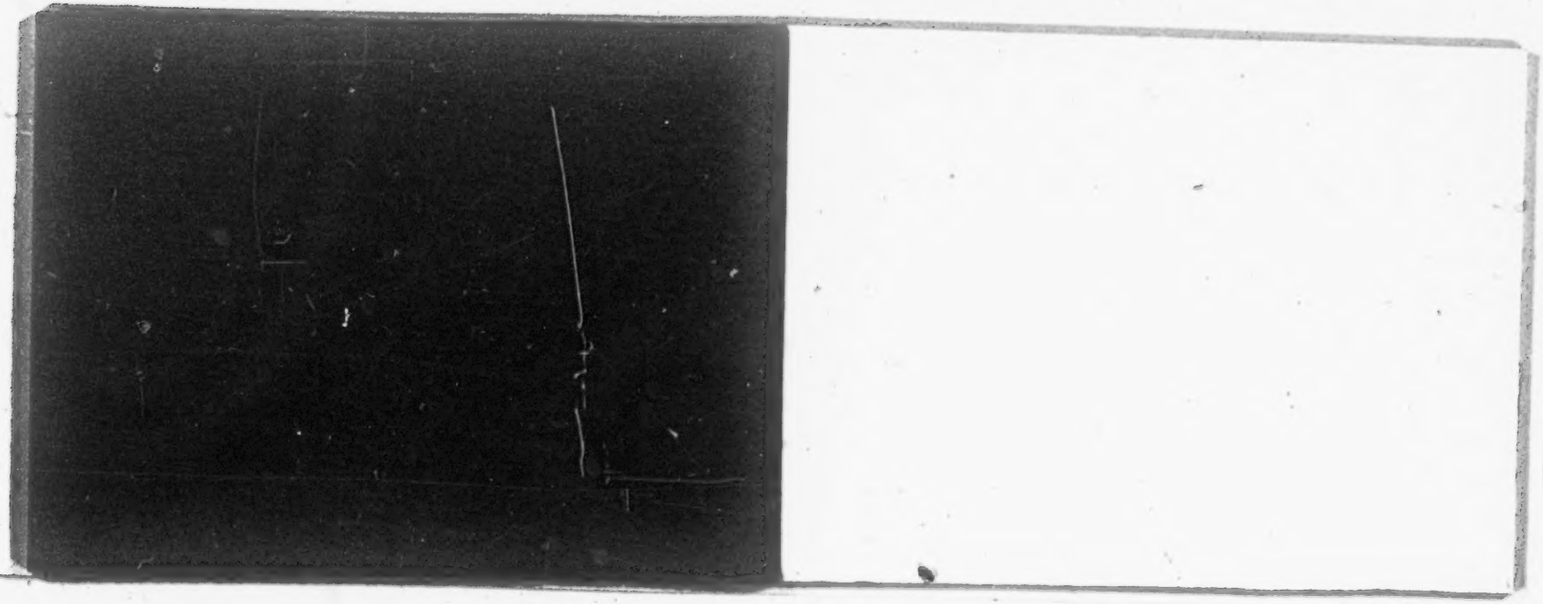

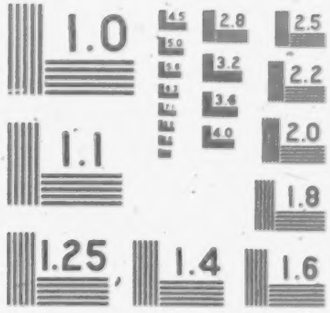

NATURE OF CASE.

Respondent, a Delaware corporation, commenced an action in the United States District Court for the Eastern District of Wisconsin, to permanently enjoin the petitioners, residents of Wisconsin, from picketing respondent's retail meat markets in the city of Milwaukee, Wisconsin. Hearing was had and testimony taken, and a temporary injunction granted by the United States District Court for the Eastern District of Wisconsin. This ruling was affirmed by the Circuit Court of Appeals for the Seventh Circuit (82 Fed. (2d) 68). The cause was then tried on its merits and the United States District Court for the Eastern District of Wisconsin found in favor of respondent and made findings of fact to which no exceptions have ever been taken by the petitioners, and permanently enjoined the petitioners from continuing certain acts. On appeal to the Circuit Court of Appeals the judgment of the District Court for the Eastern District of Wisconsin was affirmed. (Decided May 13, 1937.) Motion for rehearing was denied.

The facts are briefly and correctly stated by the Circuit Court of Appeals in its opinion affirming the interlocutory decree of the District Court in 82 Fed. (2d) 68, at 70, as follows:

> "No strike or dispute between employer and employee is here involved. The primary question presented is whether a labor union representing not one of the employees of a business, can lawfully picket that business and thus injure it, for the purpose of compelling the employer to accept the union as the sole bargaining agent of the employer's workmen over their protest and to the exclusion of the agency which the employees in the exercise of their free choice have unanimously selected."

Contrary to the claimed contention of the petitioners as found on page 2 of their petition for writ of certiorari, the purpose of the picketing was not to induce

> "respondent to sign what is known as a 'Preferential Contract,' which requires the employer to give a preference to union workmen in choosing employees,"

but was

> "For the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union, and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets in the event complainant refused to yield to such coercion, * * *. (Record 6172, page 7, finding of fact 6.)

In order to accomplish this result

> "the defendants have conspired and concerted between them to cause, and have, commencing on April 6, 1935, and continuously thereafter until enjoined *pendente lite* on April 19, 1935, caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant, and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant, and have falsely accused the complainant of being unfair to organized labor in its dealings wih said employees, and that all of the defendants have prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation, annoyance, threats and intimidation, and said defendants would have continued said action but for said in-

junction *pendente lite,* and said defendants would continue such action in the future unless permanently enjoined'' (Record 6172, pages 7-8, finding of fact 6).

The trial court further found, to which finding of fact no exception has ever been taken:

''There is in existence no labor dispute between complainant and defendants, or any or either of them'' (Record 6172, page 8, finding of fact 8).

The trial court further found as a fact, to which no exception has ever been taken:

''* * * that the complainant has notified its employees that they were free to join said union if they so desired, and complainant is now ready and willing to permit them to so join, but that said employees have declined and refused to join said labor union; that said defendant labor union was not the union chosen by any of the said employees of the complainant to represent them in any respect with the complainant'' (Record 6172, page 7, finding of fact 5).

QUESTION INVOLVED.

The only question involved in the instant case is whether the evidence sustains the findings of the trial court. No exceptions to any of the findings have been taken. The case does not present, as claimed by counsel for petitioners on page 3 of the petition for writ of certiorari, any question under the Norris-LaGuardia Act as to the right of a federal court to ''enjoin picketing and peaceful persuasion by a labor union and its members where the employees of the employer who is being picketed are not members of such

labor union, and are not on strike." The purpose of the picketing in the instant case, as found by the trial court, was to coerce the respondent to compel its employees to join an organization in contravention of their unanimous choice. Likewise, the picketing was not peaceful, for, as found by the trial court, the petitioners prevented patrons from patronizing respondent's stores by annoyance, threats and intimidation. The objective of such unlawful picketing was to compel the respondent to coerce its employees to accept the petitioners as their representative contrary to the unanimous decision of the employees, and in the event of the respondent faling to exercise such coercion to destroy the respondent's business.

SUMMARY OF ARGUMENT.

I.

The instant case presents only the question as to the sufficiency of the evidence to sustain the findings of the trial court.

No exceptions have ever been taken to the findings of the trial court and the same have been affirmed by the Circuit Court of Appeals.

II.

The attempt of the petitioners to compel the respondent to recognize them as the sole agent of respondent's employees, none of whom petitioners represent, to the exclusion of the agency which the employees themselves have unanimously accepted is unlawful and an effort to compel the respondent to unlawfully invade the "full freedom" of choice in selecting a bargaining agent which is guaranteed to the employees as a matter of public policy by Section 2

of the Norris-LaGuardia Act (29 U. S. C. A. Section 102), and Section 268.18 of the Wisconsin Statutes.

International Alliance, etc., Local vs. Rex Theatre Corp., 73 Fed. (2nd) 92 (C. C. A. 7th).

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 50 Sup. Ct. 427.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

Picketing to accomplish an unlawful purpose is an unlawful invasion of property rights and will be enjoined.

Truax vs. Corrigan, 257 U. S. 312, 42 Sup. Ct. 124.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911.

Ellis vs. Journeyman Barber Union, 194 Ia. 1179, 191 N. W. 111.

Roraback vs. Motion Picture, etc., 140 Minn. 481, 168 N. W. 766, 169 N. W. 529.

Harvey vs. Chapman, 226 Mass. 191, 115 N. E. 304.

Hughes vs. Kansas City Motion Picture, etc., 282 Mo. 304, 221 S. W. 95.

III.

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case.

29 U. S. C. A., Section 113.

Lauf vs. E. G. Shinner & Co., 82 Fed. (2d) 68.

Scavenger Service Corp vs. Courtney, 85 Fed. (2d) 825.

United Electric Coal Co. vs. Rice, 80 Fed. (2d) 1.

H. R. Report 669, 72d Congress.

S. R. Report 163, 72d Congress.

No labor dispute can arise out of the refusal of the employer to do that which is unlawful.

29 U. S. C. A., Section 102.

Ebert vs. Poston, 266 U. S. 548, 45 Sup. Ct. 188.

Fleischmann Const. Co. vs. U. S., 270 U. S. 349, 46 Sup. Ct. 284.

Price vs. Forrest, 173 U. S. 410, 19 Sup. Ct. 434.

Hellmich vs. Hellman, 276 U. S. 233, 48 Sup. Ct. 244.

Congress, in declaring as a rule of public policy the right of the employee to be free from interference, did not intend to restrict the power of the courts to suppress such interference by injunction.

29 U. S. C. A., Sections 102, 113.

The provisions of the Act which purport to limit the jurisdiction of the courts are to be strictly construed.

Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 41 Sup. Ct. 172, 178.

The provisions of the Act restricting jurisdiction apply only to cases involving labor disputes, and hence have no application here.

29 U. S. C. A., Sections 101 to 113.

IV.

The requirement of Section 7 of the Norris-LaGuardia Act that specific findings of fact be made applied only to cases arising out of labor disputes, hence is inapplicable here.

29 U. S. C. A., Section 107.

For the same reason, it was unnecessary for complainant to prove that it made every reasonable effort to settle the "dispute".

29 U. S. C. A., Section 108.

V.

The case of *Senn vs, Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857, relied upon by petitioners presented an entirely different set of facts and is clearly distinguishable from the case at bar.

VI.

This court has in effect ruled the same as the Circuit Court of Appeals for the Seventh Circuit ruled in the instant case in *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1, Petition for writ of certiorari was denied by this Court in 297 U. S. 714.

National Labor Relations Board vs. Jones & Laughlin Steel Corp., 57 Sup. Ct. 615, at 627, ... U. S. ..... 81 L. Ed. 573.

ARGUMENT.

I.

Counsel for petitioners throughout the brief assumes that there was a labor dispute, and that the pickets were merely using peaceful persuasion. These assumptions are contrary to the facts as found by the trial court and approved by the Circuit Court of Appeals. Counsel for the petitioners apparently realizes the weight to be given to the findings of fact of the trial court, for on page 32 of the brief he attempts to dispose of these findings of fact as follows:

"It is true that the findings of fact contain conventional accumulation of words usually included by counsel in findings of fact in cases of this kind."

We submit that findings of fact made by a United States District Court cannot be disposed of with such ease and nonchalance.

Likewise, counsel for the petitioners erroneously assumes throughout the brief that a labor dispute existed. This is contrary to the findings of fact, particularly the 8th finding of fact, which specifically finds (R. 6172, page 8):

"There is in existence no labor dispute between complainant and defendants, or any or either of them."

On page 18 of petitioners' brief is found a statement to the effect that there was a dispute as to the hours of labor, and that therefore this forms a basis for a labor dispute. An examination of the record discloses that this is the first time this contention has ever been made. This contention is without foundation in fact and contrary to the testimony. The testimony of the respondent on this point is as follows (R. 5551, page 13):

"There is no dispute at the present time between me and any of my men in reference to wages or in reference to hours of labor or conditions of labor. There is no dispute between me and any of my men at the present time with reference to who shall represent them. There is no dispute of any kind between me and any of my men at the present time."

Likewise, counsel erroneously assumes on page 36 of his brief that the bargaining agent selected by the employees of the respondent was a company union. The undisputed

proof is that the respondent did not know what union any of its men belonged to, and was not concerned with it in any manner (R. 5551, page 13). The sole concern of the respondent was that its business and property should not be destroyed by the petitioners in their attempt to coerce the respondent to compel its employees, contrary to their unanimous decision, to select petitioners as their sole bargaining agent. After hearing the testimony the trial court found as a fact that there was no labor dispute, which finding of fact was affirmed by the Circuit Court of Appeals for the Seventh Circuit, and to which finding of fact no exception or proper challenge has ever been made by petitioners.

II.

The only justification which the petitioners claim for the injury which they seek to inflict upon respondent's business, is the refusal of the respondent to recognize them as the sole bargaining agent of respondent's men to the exclusion of the representative which the employees themselves have unanimously selected in the exercise of their own free choice.

The contract proposed by the petitioners (Defendant's Exhibit B, Article 14) provides that the respondent "agree not to negotiate with any but the duly elected officers of Local No. 73 or other authorized members of same local, and further agree not to make a contract with anyone not affiliated with Local No. 73." The contract proposed by the petitioners, if signed by the respondent, would prevent recognition of the bargaining agent which the respondent's employees had unanimously selected, and would prevent the making of any contracts, whether of employment or otherwise, between the respondent and its employees, as none of them were members of petitioner union. The petitioners were attempting to force and compel the employer to interfere with the employees' freedom of choice in the selec-

tion of a bargaining agent. Neither the employer nor any of its employees are engaged or involved in a labor dispute with anyone. The petitioners seek to compel the respondent's employees to join the petitioner union in order that it may represent the employees in their dealings with the employer. This would constitute a violation of both the federal and state law if respondent complied with the petitioners' demands, because under both the federal and state law the respondent is specifically enjoined from influencing its employees in their choice of a union or their representative. The employees have specifically refused to join the petitioner union and have formed a union of their own without any aid, assistance, suggestion or interference on the part of the respondent; the employees have unanimously selected their own representatives, likewise without any interference, suggestion or participation of any kind on the part of the employer. The right of the employees to so act is fully protected by both the federal and state law, and to compel the respondent to coerce them to do otherwise would be a direct violation of both federal and state law. Both the Norris-LaGuardia Act and Section 268.18 of the Wisconsin statutes declare rules of public policy, both enactments assuring employees full freedom of association, self-organization and designation of representatives of their own choosing, and both acts specifically provide that employees

> "shall be free from the interference, restraint or coercion of employers of labor, or their agents, in the designation of representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

These declarations establish rights of employees which, the courts will protect by injunction.

Texas & N. O. R. Co. vs. Brotherhood of Ry. & S. S. Clerks, 281 U. S. 548, 569, 50 Sup. Ct. 427, 433.

Trustees of Wisconsin State Federation of Labor vs. Simplex Shoe Mfg. Co., 215 Wis. 623, 256 N. W. 56.

The right of the respondent to carry on its business is a property right, which the courts will protect by injunction against interference committed without just cause or excuse. Picketing or boycotting which have as their sole purpose the injury of the business at which they are directed, are acts of interference within the meaning of the rule.

Truax vs. Corrigan, 257 U. S. 312, 354, 42 Sup. Ct. 124, 137:

> "The employer has, of course, a legal right to carry on his business for profit, and incidentally the subsidiary rights to secure and retain customers * * *. This right to carry on business—be it called liberty or property—has value, and he who interferes with the right without cause renders himself liable."

Again on page 127 the court stated:

> "Plaintiff's business is a property right (Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 465, 41 Sup. Ct. 172, 65 L. Ed. 349) and free access for employees, owner, and customers to his place of business is incident to such right. Intentional injury caused to either right or both by a conspiracy is a tort. Concert of action is a conspiracy, if its object is unlawful or if the means used are unlawful."

It is well settled that no just cause or excuse for picketing can be found outside of the field of employer-employee

relationship, and that within that field its use can only be justified as an aid to the attainment of a legitimate or lawful end.

Parker Paint & Wall Paper Co. vs. Local Union No. 813, 87 W. Va. 631, 105 S. E. 911, 915.

In this case the court said:

> "It is a well-settled principle, based on sound reasoning, that no person or persons have the right to maliciously injure or destroy the business of another, by acts which serve no legitimate purpose of his own.
>
> " 'One man singly, nor any number of men jointly, having no legitimate interests to protect, may not lawfully ruin the business of another by maliciously inducing his patrons and third parties not to deal with him.' Ertz vs. Produce Exch., 79 Minn. 140, 48 L. R. A. 90, 79 Am. St. Rep. 433, 31 N. W. 737."

No "labor dispute" within the meaning of Section 13 of the Norris-LaGuardia Act exists in this case. No labor dispute can arise out of the refusal of the employer to do that which is unlawful. The provisions of the Norris-LaGuardia Act restricting jurisdiction apply only to cases involving labor disputes, and hence have no application in the instant case. Thus the requirement of Section 7 of the Norris-LaGuardia Act that specific findings of fact be made applies only to cases involving labor disputes, and hence is inapplicable here for the same reason the provision of the Norris-LaGuardia Act requires respondent to exercise every reasonable effort to settle the dispute is inapplicable here.

III.

No "labor dispute" within the meaning of the Norris-LaGuardia Act exists in this case, and no "labor dispute" can exist in the absence of a controversy between an employer and his employees or a demand by members of the craft of an employer to perform some lawful duty for the benefit of the craft. No "labor dispute" can arise out of the refusal of the employer to do that which is unlawful.

In the instant case petitioners make no attempt to show any justification or excuse for picketing except the claim that the picketing is protected from interference by reason of the Norris-LaGuardia Act. This contention is untenable. Congress has explicitly declared as a matter of public policy the right of the employee to be free from restraint and coercion of every kind. Under these circumstances it cannot be presumed that Congress has withdrawn from federal Courts the power and jurisdiction to protect that right. It is the duty of all courts to give effect to the intent of Congress.

Takoa Ozawa vs. U. S., 43 Sup. Ct. 65, 67, 260 U. S. 178, 194.

Any provisions of the Norris-LaGuardia Act which purport to limit jurisdiction of the courts are to be strictly construed, because such limitation "imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States."

Duplex Printing Press Co. vs. Deering, 254 U. S. 443, 41 Sup. Ct. 172, 178.

Furthermore, the Norris-LaGuardia Act specifically provides its own rule of construction as follows (29 U. S. C. A., Sec. 102):

"*In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter,* the public policy of the United States is hereby declared as follows:

"* * * though he (the employee) should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, * * * and that he shall be free from the interference, restraint, or coercion of employers * * *; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted" (Italics ours).

In the instant case where the acts complained of are not done in furtherance of the employees, organization or bargaining activities, the restrictive provisions of the Norris-LaGuardia Act have no application. Consequently the restrictive provisions of the act cannot be held to apply to a case where the only object of the petitioners' activities is to violate the right given to the employee by the very act itself.

It cannot be contended that Congress in creating certain rights in employees withdrew from the courts the power and jurisdiction necessary to the protection of those rights, or that Congress declared a rule of public policy and at the same time prohibited the courts in enforcing it. The intent and purpose of the act are fully discussed by the Circuit Court of Appeals for the Seventh Circuit in 82 Fed. (2d) 68, which we submit places the correct construction upon the act.

It clearly appears from the legislative history of the act that Congress intended the term "labor dispute" to embrace, and the provisions restricting jurisdiction to be applicable to, only those cases in which a dispute between an employer and his employees existed. The only purpose of Congress, in providing in Section 13 of the Act that persons not in the proximate relationship of employer and employee could be parties to a labor dispute, was to authorize those not standing in such relationship to *assist* the employee in his disputes with his employer, an assistance which had been denied the employee in *Duplex Printing Press Co. vs. Deering,* 254 U. S. 443. This intent clearly appears from the report of the House Committee on judiciary favorably reporting the bill a few days before its passage. That report, quoted from extensively in *Cinderella Theatre Co. vs. Sign Writers' Local Union,* 6 Fed. Supp. 164, recited:

> "In the case of Duplex Printing Press Co. vs. Deering, (254 U. S. 443, 41 Sup. Ct., 172, 65 L. Ed. 349, 16 A. L. R. 196), decided January 3, 1921, and being a six-to-three decision, the Court held so far as pertinent to this particular discussion, that this section of the Clayton Act provided a restriction upon the use of the injunctions in favor only of the immediate disputants *and that other members of the union not standing in the proximate relation of employer and employee could be enjoined. Of course, it is fundamental that a strike is generally an idle gesture if confined only to the immediate disputants.* This is intended to be remedied by the later provision in this act defining the meaning of the term 'person participating in a labor dispute', as to whom, as in the bill defined, the courts are deprived of jurisdiction to issue injunctions in the specified instances set forth in this section * * *.

"Section 13 contains definitions which speak for themselves. It is hardly necessary to discuss them other than to say that these definitions include, as hereinabove stated, a definition of a person participating in a labor dispute which is broad enough *to include others than the immediate disputants* and thereby corrects the law as announced in the case of Duplex Printing Press Co. vs. Deering, supra, wherein the Supreme Court reversed the Circuit Court of Appeals (252 F. 722) and held that the inhibition of Section 20 of the Clayton Act (29 U. S. C. A., Sec. 52) only related to those occupying the position of employer or employee and no others. The Supreme Court held to the same effect in the case of the American Steel Foundries Co. vs. Tri-State Central Trades Council (257 U. S. 184, 42 Sup. Ct. 72, 66 L. Ed. 189, 27 A. L. R. (360), supra" (Italics ours).

This intent also appears from the Senate Committee report, quoted from in the same case (6 Fed. Supp. 170):

"'Section 13 of the bill defines various terms used in the act, and it is not believed that any criticism has been or will be made to these definitions. In order that the limitations may not be whittled away by refined definitions *of what persons are to be regarded as legitimately involved in labor disputes,* the bill undertakes specifically to designate those persons who are entitled to invoke the protection of the procedure required'" (Italics ours).

It will be observed that the committee reports assume without comment that a labor dispute can only be a controversy between an employer and his employees; and that Congress did not intend to enlarge this definition to include

controversies fomented by outsiders seeking to interfere in a harmonious employer-employee relationship, but only intended to give legal sanction to the aid which those not a party to the relationship might give to the "immediate disputants". In order to enjoy the status of a disputant under the Act, a person must be either an employee or one who is aiding the employee in the course of action which he has voluntarily elected to pursue. *29 U. S. C. A., Sec. 113 (c)* provides that the term "labor dispute" includes "any controversy concerning the terms or conditions of employment, or concerning the association or representation of persons in negotiating" the terms of employment. This means any controversy between an employer on the one hand, and his employees and their chosen representatives on the other. In the absence of a controversy between employer and employee, there can be no "labor dispute" within the meaning of the Act.

Beyond this, the expression "any controversy" must sooner or later be limited in its meaning to any controversy having a lawful subject matter. It cannot be held that Congress intended, for example, that a "labor dispute" could be created by employees demanding that an employer surrender his property and business to them as a condition of employment; or by a professional labor organizer demanding that an employer replace all his employees with men whom the organizer represents; or by a professional agitator demanding, over the unanimous protests of the employees, that tribute be paid to him; or that he be accepted as the "sole" representative of the men.

So far as the "right" of intermeddlers to foment a "labor dispute" is concerned, it must be borne in mind that the Norris-LaGuardia Act was designed solely to promote and foster the interests of the employees; they, and they alone, are the subjects of solicitude. The Act was not designed to promote the objects of any particular group

of labor organizers, whether they be affiliated with the A. F. of L., the various communistic organizations, or any of the many independents that have for years existed. It obviously was not intended to promote the type of labor racketeering and exploitation which has developed in this country and which finds its most vicious expression in compelling employers and employees, over their united protests, to accept the racketeer as the "representative" of the men. Coercion of this kind has been among the most disgraceful aspects of our recent economic life. Certainly Congress did not intend to encourage it, or to restrict the jurisdiction and power of the courts to protect the employee against it.

Moreover, unless effect be given to the express purpose of Congress by limiting the meaning of the term "labor dispute" to controversies between an employer on the one hand, and his employees and their *chosen* representatives on the other, not only will the employee be exposed to racketeering, but in addition, the employer will be made the helpless victim of the ruthless acts of labor organizers competing for the plum of representation. If the petitioners can lawfully do what they have undertaken to do, and if the respondent can be forced to yield to their demands and sign the agreement, then the present association of respondent's employes could with even greater right picket the markets for the purpose of compelling the ouster of the petitioners and the reinstatement of the association as representative of the men; and the radical labor groups, the professional labor racketeer, and any other self-styled "representative" of labor could picket and foment disorder to compel the payment to them of some portion of the profits of "representation"; and surely and rapidly the business would be destroyed and the employer left without any redress whatever. It must be remembered that the local

labor organization financially able to respond for the damage it inflicts has not yet appeared in our economic life.

The employer in this case is not involved in any dispute of any kind. It stands ready and willing to deal with any bargaining agency which its employees might care to select. It has repeatedly told its employees that they are free to join the petitioner union or any other union they choose; that it makes no difference to the employer whatever. Both the officers and the employees so testified (R. 5551, pages 13, 16, 22, 23, 26, 27, 28, 29, 30, 35). The employees of their own volition have refused to join the petitioner union because they could not see where it would help them (R. 5551, pages 25, 36); because the petitioner union does not do anything for its members (R. 5551, page 31); because there was trouble among petitioner union's men (R. 5551, page 25).

If the petitioners have any dispute it is with the respondent's men because they refused, in the exercise of their own free choice, to become members of the petitioner union. Since respondent has no controversy with anyone, it is not involved in any "labor dispute", and, therefore, is not within the restrictive provisions of the Norris-LaGuardia Act.

IV.

The requirements of Section 7 of the Norris-LaGuardia Act that specific findings of fact be made apply only to cases arising out of labor disputes (29 U. S. C. A., Section 107), and hence are inapplicable in the instant case, for the reason there is no labor dispute. For the same reason it was unnecessary for the respondent to prove as a condition precedent to obtaining the injunction that it had made every reasonable effort to settle the "dispute" (29 U. S. C. A., Section 108).

V.

Petitioners' brief is based primarily upon the decision of this court in *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Sup. Ct. 857.

This Court has not decided the question in issue here contrary to the decision of the Circuit Court of Appeals. This Court has in effect ruled the same as the Circuit Court of Appeals upon a similar question. *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1. Petition for writ of certiorari denied by this Court in 297 U. S. 714, 56 Supp. Ct. 590. Likewise the contention of petitioners that the decision of the Circuit Court of Appeals is contrary to the decision of this Court in the case of *Senn vs. Tile Layers Protective Union, Local No. 5,* 300 U. S. ....., 81 L. Ed. 829, 57 Supp. Ct. 857, is untenable. The *Senn* case presented an entirely different set of facts. In the *Senn* case the trial court found as a fact that there was a labor dispute within the meaning of the Wisconsin statutes. See Justice Brandies' opinion, 57 Supp. Ct. 861. In the *Senn* case the trial court also found that the picketing was "peaceful, without violence and without any unlawful act". The trial court also found that the picketing was entirely within the provisions of the Wisconsin Labor Act. The majority opinion of this Court, in discussing the Wisconsin statutes, states (57 Sup. Ct. 862):

> "* * * The statute provides that the picketing must be peaceful; and that term as used implies not only absence of violence, but absence of any unlawful act. *It precludes the intimidation of customers. It precludes any form of physical obstruction or interference with the plaintiff's business* * * *" (Italics ours).

The majority opinion continuing states:

> "The state courts found that the unions observed the limitations prescribed by the statute. * * * The picketing was peaceful. The publicity did not involve a misrepresentation of fact; nor was any claim made below that relevant facts were suppressed * * *."

These facts are entirely different from the facts as found in the instant case. The trial court in the instant case specifically found (R. 6172, page 8, finding of fact 8):

> "There is in existence no labor dispute between complainant and defendants, or any or either of them."

Furthermore, in the instant case the 6th finding of fact (R. 6712, page 7) specifically found that the petitioners

> "caused false and misleading signs, placards and banners to be placed before the said meat markets of the complainant and have caused persons, none of whom are employees of the complainant, to parade and picket before the said meat markets of the complainant."

and further that the defendants

> "have *falsely* accused the complainant of being unfair to organized labor in its dealings with its said employees, and that all of the defendants have *prevented patrons and prospective patrons of the complainant from patronizing its said meat markets by molestation, annoyance, threats and intimidation, and said defendants would have continued said action but for said injunction pendente lite, and said defen-*

dants would continue such action in the future unless permanently enjoined'' (Italics ours).

Furthermore, the trial court in the *Senn* case found as a fact that the end sought by the union was not arbitrary or capricious, but a reasonable rule "adopted by the defendants out of the necessities of employment within the industry and for the protection of themselves as workers and craftsmen in the industry."

In the instant case the trial court found (R. 6172, page 7, finding of fact 6) that the picketing was

> "for the purpose of coercing the complainant to require its employees to join and become members of said defendant labor union and accept it as their bargaining agent and representative, as a condition of their continued employment, and for the purpose of injuring and destroying the business of the complainant at said meat markets, in the event complainant refused to yield to such coercion."

The purpose of the picketing in the two cases is entirely different. The facts as found in the *Senn* case and in the instant case are entirely different. In the *Senn* case there was a labor dispute. In the instant case there is no labor dispute. In the *Senn* case the object of picketing was to advise the public of the existence of a fact, to-wit: the labor dispute. In the instant case the object of the picketing was to coerce the respondent to compel its employees to do an act contrary to the provisions of the Norris-LaGuardia Act, and in the event of the refusal of the respondent to so coerce its employees, to picket the respondent and destroy its business. Furthermore, as pointed out by the majority opinion in the *Senn* case, there was no misrepresentations or untruthful statements. But in the instant case, in order

to accomplish the unlawful object of its picketing the petitioner "caused false and misleading signs, placards and banners" to be placed in front of the respondent's markets and falsely accused the respondent. Again in the *Senn* case the right to relief was founded upon an alleged violation of a state statute. The state court found as a fact in the *Senn* case that there was no violation of the statute. In the instant case relief is sought under a federal statute. The trial court found as facts, which have never been challenged, that there were violations of the federal statutes by the petitioners, and found as a fact that no labor dispute existed, and that the picketing was unlawful and for the purpose of destroying the respondent's business, and unless the petitioners were enjoined respondent would suffer irreparable damage.

It is thus apparent that the nature of the issues in the *Senn* case is so vastly different from the issue involved in the instant case that there is no analogy between them, and the opinion of this Court, instead of being contrary to the decision of the Circuit Court of Appeals in the instant case, as claimed by counsel opposed, is authority for the decision of the Circuit Court of Appeals.

VI.

The same question presented in the instant case was presented to this Court in the case of *United Electric Coal Co. vs. Rice,* 80 Fed. (2d) 1, and petition for writ of certiorari was denied in 297 U. S. 714. In the *United Electric Coal Company* case the Circuit Court of Appeals states the question involved as follows (page 2):

> "The real controversy is one between two unions —the United Mine Workers of America, hereinafter called the United; and the Progressive Miners of America, hereinafter called the Progressive. • • •

Appellant is the innocent bystander, a victim of this unabated conflict. Appellant has no dispute with its employees. The wage scales in force apparently were satisfactory to employer and employee alike. The working conditions brought no discontent. The employees were desirous of working for appellant. With them appellant wished to operate its mine. This has been prevented by the struggle between the two unions over who should represent the employees."

In the instant case the controversy, if there be one, is between the petitioners and the bargaining representative unanimously chosen by respondent's employees. Respondent is the innocent bystander, and but for the relief obtained would be a victim of possible unabated conflict between the petitioners and the bargaining representative chosen by respondent's employees. Respondent has no dispute with its employees. The wage scales in operation are satisfactory to employer and employee alike. The working conditions of the respondent caused no discontent. The respondent's employees are desirous of continuing to work for it, and the respondent wishes to operate its meat markets with its present employees.

Thus the question in the instant case is identical with the question presented in the *United Electrical Coal Company* case, in which case a petition for writ of certiorari was denied.

In *National Labor Relations Board vs. Jones & Laughlin Steel Corp.*, 57 Sup. Ct. 615, at 627, this Court stated:

"• • • The decree which we affirmed in that case (Virginian Railway Co. vs. System Federation No. 40, 299 U. S. ....., 57 Sup. Ct. 592, 81 L. Ed. ....., decided March 29, 1937) *required the railway company*

to treat with the representative chosen by the employees and also to refrain from entering into collective labor agreements with anyone other than their true representative * * *'' (Italics ours).

In the instant case, petitioners contend they have a right to compel respondent to do the very acts this court by injunction required the employer to refrain from doing in the *Virginian Railway Co.* case, supra.

We submit there is no basis for granting the petition for writ of certiorari.

Respectfully submitted,

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